



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill dismantles the citrus canker eradication program within the Department of Agriculture and Consumer Services.

**Safeguard individual liberty:** The bill dismantles the citrus canker eradication program within the Department of Agriculture and Consumer Services.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within 1,900 feet of infected or exposed trees.

Florida has been battling citrus canker since 1995, when an infestation occurred in an urban backyard very near Miami International Airport. Unfortunately, the United States Department of Agriculture (USDA) and the Florida Department of Agriculture and Consumer Services (DACS) were not able to contain the disease in the urban setting.

The eradication program was nearly halted in November, 2000, by a Broward County Circuit Court order. Additional court orders in May, 2002, from the same judge continued to restrict eradication activity. The judge had declared unconstitutional the statute passed by lawmakers in the 2002 session, requiring the department to remove not only infected trees, but also exposed trees located within 1,900 feet of infected ones.

Based on research conducted by Dr. Timothy Gottwald, a scientist with the United States Department of Agriculture (USDA), "exposed to infection" refers to citrus trees located within 1,900 feet of an infected tree. This term, "exposed to infection," was codified in statute during the 2002 legislative session. At the same time, the Legislature provided for a repeal of the definition effective July 1, 2005 with a mandatory review by the Legislature prior to that date.

Applying his order statewide, the judge also struck down the portion of the law that allows for search warrants for a county-wide area. In response, DACS now obtains individual search warrants to remove infected and exposed trees and to search nearby properties to determine the extent of the outbreak. However, prior to obtaining search warrants, DACS sends Public Information Officers (PIOs) door-to-door seeking homeowner permission for tree removal.

As a result of these legal actions, the program was working under severe constraints and the disease continued to spread in southeast Florida, and was even moved by property owners to several other counties.

Every order issued by the Broward Circuit Judge was subsequently overturned by the Fourth District Court of Appeal in West Palm Beach. The question of the constitutionality of the tree removal statute went before the Florida Supreme Court and the law was upheld in February, 2004.<sup>1</sup>

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<sup>1</sup> *Haire v. Florida Department of Agriculture and Consumer Services*, 870 So. 2d 774 (Fla. 2004)

In addition to the legal delays, the spread of citrus canker bacteria was aided by the unprecedented hurricane seasons Florida experienced in 2004 and 2005. In January 2006, the United States Department of Agriculture (USDA) took the position, based on scientific analysis, that the current citrus canker eradication plan in Florida was inadequate to contain the disease; a new management plan must be devised. The USDA further stated that they would no longer fund tree removal that is done with eradication as the goal.

### **Effects of Proposed Changes**

The bill dismantles the current eradication plan codified in statute and directs DACS to implement a comprehensive citrus health plan to minimize the impact of citrus pests and diseases to production and allow for Florida to market its citrus to other states and countries.

The bill prohibits the sale or movement of any citrus nursery stock, effective January 1, 2007, which has not been propagated or grown on a site approved by DACS at least one mile away from commercial citrus groves and within a protective structure approved by DACS. Citrus nurseries registered with DACS prior to April 1, 2006, are exempt from the one mile setback from commercial citrus groves while continuously operating at the April 1, 2006, location. However, these nurseries are required to propagate citrus within an approved protective structure.

DACS is given rule-making authority relating to conditions under which citrus nursery stock may be propagated, grown, sold or moved and the specifications for the approved site and protective structure.

The bill provides that certain types of citrus may be exempted from the regulations imposed in this legislation if the Citrus Budwood Technical Advisory Committee determines they pose no threat of introducing or spreading a citrus plant pest.

The bill authorizes DACS to establish regulated areas around the perimeter of commercial citrus nurseries established on sites after April 1, 2006, not to exceed a radius of one mile. The planting of citrus in an established regulated area is prohibited. The planting of citrus within a radius of one mile around commercial citrus nurseries established on sites prior to April 1, 2006, must be approved by DACS. Citrus plants within a regulated area that were planted prior to the establishment of the regulated area may remain unless they are determined to be infested or infected with citrus canker or citrus greening.

The bill authorizes DACS to require the removal of infected or infested citrus, non-approved planted citrus and citrus that has sprouted by natural means in regulated areas. The property owner is responsible for the removal of citrus planted without proper approval. An immediate final order (IFO) issued by DACS shall provide notice to the property owner that the citrus trees that are subject to the IFO must be removed and destroyed unless the property owner, no later than 10 days after delivery of the IFO, requests and obtains a stay of the IFO from the district court of appeal with jurisdiction to review such requests. The property owner is not required to seek a stay of the IFO from DACS prior to seeking the stay from the district court of appeal.

The bill preempts the removal and destruction of citrus plants pursuant to this section to the state. DACS is directed to relocate foundation source trees maintained by the Division of Plant Industry to protective sites located a minimum of ten miles from any commercial citrus grove. The bill authorizes DACS to expend existing funds from the Contracts and Grants Trust Fund for the purpose of relocating the foundation source trees.

The bill provides that claims for compensation under the Shade Dade or Shade Florida programs must be filed with DACS not later than December 31, 2007. After that date, all unfiled claims will expire.

And lastly, the bill appropriates to DACS \$10.2 million from the Agriculture Emergency Eradication Trust Fund and \$16.7 million from the Contracts and Grants Trust Fund for implementation of the program in the bill.

C. SECTION DIRECTORY:

**Section 1:** Amending s. 581.184, F.S.; directs the Department of Agriculture and Consumer Services (DACs) to implement a comprehensive citrus health plan; eliminates the authority of DACs to remove and destroy citrus trees infected with citrus canker; deleting definitions and provisions relating to immediate final orders, notice to property owners, rulemaking authority, and posting of certain conforming orders; and, requiring certain law enforcement officers to maintain order under certain circumstances involving the citrus canker disease management process.

**Section 2:** Creating s. 581.1843, F.S.; provides requirements relating to the propagation and distribution of citrus effective January 1, 2007; provides rule-making authority to DACs; provides exemption of certain citrus from provisions of this section; requires DACs to establish regulated areas around the perimeter of commercial citrus nurseries; provides conditions for regulated areas; preempts regulation of removal or destruction of citrus plants to the state; directs DACs to relocate certain citrus trees maintained by the Division of Plant Industry; and, authorizes expenditure of funds from designated trust fund.

**Section 3:** Amending s. 581.1845, F.S.; revises the terms of the citrus canker eradication compensation program.

**Section 4:** Amending s. 120.80, F.S.; deletes a cross reference.

**Section 5:** Amending s. 348.0008, F.S.; deletes a cross reference.

**Section 6:** Amending s. 933.02, F.S.; amending a cross reference.

**Section 7:** Amending s. 933.40, F.S.; deletes a cross reference.

**Section 8:** Providing an appropriation.

**Section 9:** Providing an effective date of on upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

<u>Citrus Health Plan</u>	<u>FY 06-07</u>
Agricultural Emergency Eradication Trust Fund	10,220,920
Contracts and Grants Trust Fund	<u>16,706,310</u>
	\$26,927,230
 <u>Citrus Budwood facilities relocation</u>	
Contracts and Grants Trust Fund	\$2,594,690

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

According to researchers at the University of Florida, the estimated cost to produce citrus trees in protective structures with proper sanitation requirements will cost an additional \$2 per tree. The commercial citrus industry normally uses about 3 million trees a year so the estimated fiscal impact on the private sector would be approximately \$6 million per year. However if citrus trees are not produced in protective structures, there will be a great risk of these trees being infected with citrus greening. If this occurs, the new trees will die before they reach production size. The fiscal impact if only 30 percent of trees grown without protective structures were infected would be \$9 million due to loss of trees alone. Over time, the law will have a positive fiscal impact on the private sector.

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

The bill gives the Department of Agriculture and Consumer Services rule-making authority relating to conditions under which citrus nursery stock may be propagated, grown, sold or moved and the specifications for the approved site and protective structure.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

N/A